

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

SEP 23 1999

In the Matter of)
)
Relicensing of Certain Part 90 Frequencies)
to Require Spectrally Efficient Use)

FEDERAL COMMUNICATIONS COMMISSION
RM-9705 OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF FISHER WIRELESS SERVICES, INC.

Fisher Wireless Services, Inc. ("Fisher" or the "Company"), by its attorneys and pursuant to Federal Communications Commission ("FCC" or "Commission") Rule Section 1.405(a), respectfully submits its comments in the above-entitled proceeding.¹ Fisher strongly supports the American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") proposal as an essential step toward addressing the spectrum needs of the Part 90 user community. For the reasons described below, Fisher urges the Commission to proceed expeditiously to implement the proposal outlined in the Petition.

I. INTRODUCTION

1. Fisher is a major provider of two-way radio sales and service in the Southwest. The Company has operated 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") systems in Southern California, Arizona and Nevada for a number of years. More recently, Fisher divested certain 800 MHz SMR properties to Nextel Communications, Inc. ("Nextel") and now has undertaken the deployment of an extensive 450 MHz network throughout much of California and Arizona.

No. of Copies rec'd 04
List ABCDE

¹Public Notice, In the Matter of Relicensing Certain Part 90 Frequencies to Require Spectrally Efficient Channel Use, RM-9705, Report No. 2356 (rel. Aug. 28, 1999) ("Petition").

2. The 450 MHz system includes a combination of centralized and decentralized trunked facilities and is networked using Trident's Passport network technology. When fully implemented, the network is expected to be capable of providing multi-state voice/data capabilities. Fisher understands it is one of the first operators to deploy this Trident product in a regional, commercial configuration of this scale.

3. To date, Fisher has spent more than \$2.5 Million implementing this network, a figure that includes equipment, installation, site development, frequency coordination, and FCC application preparation and filing fees. The Company has undertaken this effort because of its conviction that there is and will continue to be a market for non-consumer, dispatch-oriented service if that service is properly priced and capable of delivering a competitive quality of service using state-of-the-art technology. That conviction is based on Fisher's experience with many thousands of customers, large and small, operating in urban and rural areas with a broad variety of communications requirements and economic resources.

4. In light of Fisher's already substantial 450 MHz investment, the Petition could be perceived to present a threat, not an opportunity. The Company, like other incumbents in this band, would be required to choose between attempting to secure geographic rights to already operational site-specific frequencies or becoming subject to the relocation rights of an EA licensee. There can be no assurance that Fisher would be the successful bidder for any, much less every, frequency on which it currently operates, particularly in EAs in which one or more other licensees are authorized for the same channel(s).

5. Nonetheless, for the reasons described herein, Fisher is firmly convinced that the approach outlined in the Petition must be implemented as expeditiously as possible if the Private Land Mobile Radio ("PLMR") community, internal users and commercial operators alike, expect

to enjoy the benefits of wireless communications at an acceptable cost and with an acceptable quality of service into the next century.

II. BACKGROUND

6. The Commission has determined already that licensees in the 450-470 MHz band governed under Part 90 of its rules must implement more spectrally efficient equipment if future PLMR requirements are to be satisfied. Based on that determination, the FCC initiated what is commonly referred to as the "refarming" proceeding, in which the Commission has endeavored to develop a regulatory framework to promote the voluntary deployment of spectrally efficient equipment in the bands below 512 MHz.²

7. The refarming rules impose no requirement on incumbents in the band to replace their equipment, some of which has been in place for twenty years or more, with more efficient technology at any specified future date, although some ultimately may be forced to do so because of increased interference from adjacent channel systems. Recent changes to permit centralized trunking under certain circumstances theoretically present an incentive for licensees to move to narrowband equipment since doing so increases the possibility of clearing a channel for trunked use. Nonetheless, the practical difficulty of clearing even a single channel is substantial, perhaps insurmountable, in the congested urban areas in which spectrum is most scarce. 450 MHz trunking cannot fulfill its promise if it effectively is limited to areas in which spectrum remain plentiful. The only affirmative refarming obligation falls on equipment manufacturers seeking type

²See, e.g., *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 78 RR2d 384 (1995); *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997); *Second Memorandum Opinion and Order*, PR Docket No. 92-235, 15 CR 668 (1999).

acceptance for new equipment. Even then, however, there is no point after which older, less efficient equipment can no longer be manufactured or sold.

8. The refarming proceeding now has been under consideration for almost a decade. During that decade PCS and Nextel's iDEN system were conceived, deployed and joined cellular in enjoying exponential growth serving primarily the consumer wireless market, the telecommunications world began the process of migrating from analog to digital technology, and the FCC undertook a paradigm shift from site-specific to geographic licensing, typically awarded by competitive bidding. The refarming proceeding has not, perhaps could not have, kept pace. Based on the record to date, the requirements of even existing, much less future, PLMR users will not be accommodated without a more aggressive schedule for injecting something at least approaching state-of-the-art efficiency levels into the existing PLMR bands.³ In the Company's opinion, the Petition represents the best possibility for achieving that objective.

III. THE CURRENT 450-470 MHz RULES DO NOT SUPPORT THE WIDESPREAD DEPLOYMENT OF TRUNKED OR OTHER MORE TECHNICALLY EFFICIENT EQUIPMENT.

9. The Company is making an extensive effort to introduce advanced technologies into the 450-470 MHz Part 90 services. As noted above, it has spent considerable time, effort and money developing a regional network of trunked 450 MHz facilities. That effort has been a learning experience, and the lesson confirms Fisher's support for the AMTA proposal.

³Fisher also supports the efforts of the Land Mobile Communications Council ("LMCC") to secure new, clear spectrum for Part 90 eligibles. See, *An Allocation of Spectrum for the Private Mobile Radio Service, Petition for Rulemaking*, LMCC (filed Apr. 22, 1998). If those efforts are successful in making sufficient useable spectrum available for PLMR use in a timely fashion, and if the manufacturing community can deliver products promptly, it is conceivable that 450-470 MHz efficiency improvements will not be necessary. However, it is imperative that these initiatives proceed on parallel tracks since there can be no assurance that all, or perhaps any, of the actions recommended by LMCC will be implemented on a timely basis.

10. For example, Fisher has devoted substantial resources to identifying useable frequencies through extensive on-site plus coverage area monitoring and data base review. The process is time-consuming and costly and, in the end, the Company's frequency selections remain subject to the determinations of a frequency coordinator. In fact, they are subject to a multiplicity of coordinators with varying levels of expertise since any frequency coordination generates a daisy-chain of theoretically affected licensees. Each has the legal right, if not a supportable legal basis, for challenging an application. Even with the full support of the original frequency coordinator, attempting to get such matters resolved and assignment of the frequency confirmed on a timely basis can itself be resource intensive.

11. Further, the Company's laborious frequency analyses often do not support coordination for centralized trunked (YG) status even if there is no traffic on the channel. The 450-470 MHz band is replete with "valid" licenses for systems which no longer are being used and perhaps never were constructed. Because these channels traditionally were available on a shared basis, and because the number of authorizations in the band was so substantial, the FCC understandably never imposed an affirmative obligation on licensees to report their construction status. The recently revised trunking rules should improve somewhat the likelihood of being able to clear such licensees out of the FCC's data base⁴. Nonetheless, the sheer volume of authorizations can make the task a particularly daunting one in spectrum deficient markets such as Los Angeles and San Francisco.

12. Thus, Fisher finds itself facing a Sisyphean channel search on a daily basis as it struggles to identify sufficient "clear" and useable shared channels to warrant continued investment in a technically advanced trunked system. The problem, of course, is most extreme

⁴*Third Memorandum Opinion and Order*, PR Docket No. 92-235, see n.2 supra.

in the very markets with the greatest potential for needing and supporting such a system. Although the Company has established itself as a 450-470 MHz incumbent in a number of communities, it is convinced that the current regulatory process will not yield necessary efficiency improvements in markets with the most severe spectrum shortages in any foreseeable time frame.

13. The FCC can confirm this by examining the number of YG channels licensed or pending in any major urban area. Without even the limited channel exclusivity that accompanies YG status, neither Fisher, nor Boeing, nor other potential licensees will be able to deploy the advanced technologies, in particular digital technologies, that will provide PLMR eligibles with the quality of service and capacity improvements refarming was intended to produce. And without the expectation of a solid customer base of private and commercial operators, it is unlikely that the equipment supplier community will continue to develop advanced products for use by the PLMR industry in this band.

IV. CONCLUSION

14. Fisher is a committed, financially capable provider of two-way services to the traditional PLMR user community. Its conviction that refarming will not produce the hoped for, and all too necessary, improvements in efficiency is based on the Company's real world experience in attempting to secure sufficient useable spectrum to justify an investment in capacity-enhancing technology. The difficulties faced by Fisher cannot be unique. Rather they represent the inherent problem in attempting to protect the interests of the incumbent while endeavoring to deploy more advanced systems on an overlay basis. In the Company's opinion, the AMTA Petition represents a more reasonable, realistic balance of incumbent protection and efficiency enhancement than do the current rules. Fisher is convinced that the interests of all parties, and the overall benefit of improved spectrum efficiency, would have been better served if the money

the Company has expended securing its limited spectrum rights had instead been used to purchase spectrum in an auction and to retune or re-equip incumbent licensees.

15. For these reasons, Fisher urges the Commission to initiate a proceeding expeditiously to implement the proposal outlined in AMTA's Petition.

Respectfully submitted,

FISHER WIRELESS SERVICES, INC.

By: 

Elizabeth R. Sachs, Esq.
Its Attorney

Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., 12th Floor
Washington, D.C. 20036
(202) 857-3500

Filed: September 23, 1999

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this September 23, 1999 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

Chairman William E. Kennard
Federal Communications Commission
445 12th St., S.W., Rm. 8-B201
Washington, D.C. 20054

Commissioner Susan Ness
Federal Communications Commission
445 12th St., S.W., Rm. 8-B115
Washington, D.C. 20054

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th St., S.W., Rm. 8-A302
Washington, D.C. 20054

Commissioner Michael Powell
Federal Communications Commission
445 12th St., S.W., Rm. 8-A204
Washington, D.C. 20054

Commissioner Gloria Tristani
Federal Communications Commission
445 12th St., S.W., Rm. 8-C302
Washington, D.C. 20054

Dale N. Hatfield, Chief
Office of Engineering & Technology
445 12th St., S.W., Rm. 7-C155
Washington, D.C. 20054

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20054

Kathleen O'Brien-Ham, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20054

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20054

Steve Weingarten, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4-C207
Washington, D.C. 20054

Jeff Steinberg, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4-C207
Washington, D.C. 20054

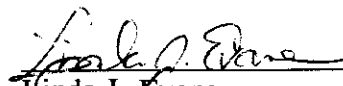
Paul D'Ari, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4A-207
Washington, D.C. 20054

D'wana R. Terry, Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4C-321
Washington, D.C. 20054

Ramona Melson, Chief Legal Counsel
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4C-321
Washington, D.C. 20054

Herb Zeiler, Deputy Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4C-321
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th St., N.W.
Washington, D.C. 20037



Linda J. Evans